

ISSUE DATE: June 26, 1995

DOCKET NO. G-002/M-94-103

ORDER GRANTING IN PART AND DENYING IN PART A PETITION FOR PARTIAL  
RECONSIDERATION OR CLARIFICATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Joel Jacobs  
Marshall Johnson  
Dee Knaak

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Request for an Accounting  
Order Granting Northern States Power  
Company-Gas Utility Approval to Record  
Certain Margin Revenues from Transactions  
Made Under Authority Granted by FERC  
Order 636 and to Credit Those Margin  
Revenues to NSP's Retail Firm Gas Customers  
in the State of Minnesota

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DENYING IN PART A PETITION FOR  
PARTIAL RECONSIDERATION OR  
CLARIFICATION

**PROCEDURAL HISTORY**

On February 2, 1994, Northern States Power Company (NSP) filed a request for Accounting Order Affecting Rates. NSP proposed to credit firm customers with all of the sales margins collected from off-system customers through its Off-System End-User Sales (OSEUS) program. NSP made this proposal for off-system sales made from November 1, 1993 through June 30, 1994.

On March 20, 1995, the Commission issued its ORDER REGARDING THE TREATMENT OF REVENUES FROM NSP'S OFF-SYSTEM END-USER SALES PROGRAM.

On April 10, 1995, NSP submitted its Petition for Partial Reconsideration or Clarification of the Commission's March 20, 1995 Order. NSP requested that:

- NSP be required to return capacity release revenue from all sources to firm customer through the PGA using FERC Account 805.1 only from July 1, 1993 through June 30, 1994;
- NSP be required to provide one annual report, rather than quarterly reports indefinitely, comparing off-system margin revenue to capacity release transactions on Northern's electronic bulletin board to help determine whether NSP is maximizing the amount of revenue NSP is getting for the use of its excess capacity;

- NSP be required to file proposed tariffs and cost studies unbundling its balancing service *no later than* the time of its next general gas rate case, rather than *before* its next rate case; and that
- the Commission clarify its decision requiring a complete examination of NSP's agency services, and requiring NSP to file complete information regarding the cost and revenues experienced in connection with its agency services to state that information like the information that was provided by NSP-Gas in its 1992 rate case, in Docket No. G-002/GR-92-1186, would be sufficient for an initial NSP-Gas rate filing.

No other parties petitioned for reconsideration or clarification and no other parties answered NSP's petition.

On June 8, 1995, the Commission met to consider this matter.

### **FINDINGS AND CONCLUSIONS**

NSP sought reconsideration or clarification of four parts of the Commission's March 20, 1995 Order. Those four parts are considered as follows:

#### **A. Ordering Paragraph 2**

##### **1. The Order Language**

Ordering Paragraph 2 of the Commission's March 20, 1995 Order states:

NSP shall return all past, present and future capacity release revenue from all sources to firm customers using FERC Account 805.1.

##### **2. NSP's Argument**

NSP requested that the Commission amend this Ordering Paragraph so that only the capacity release revenue from November 1, 1993 through June 30, 1994 would have to be returned to firm customers. NSP stated that it plans to submit a proposal for July 1, 1994 through June 30, 1995 at a later time.

NSP noted that the only time period covered by its original petition was November 1, 1993 through June 30, 1994. NSP believes the Commission's March 20, 1995 Order requiring it to return all future capacity release revenue to firm customers will forever take away the possibility of the Company sharing in some of this revenue. NSP also notes that it explicitly asked to reserve the right to file a capacity release incentive plan for the July 1, 1994 through June 30, 1995 time period.

NSP also noted that capacity release was not an issue raised in its original petition. NSP suggested that a generic, all-utility proceeding would be a more appropriate forum for addressing how revenue from capacity release and off-system sales should be handled for ratemaking purposes because all utilities would then be operating under the same guidelines and assumptions.

### **3. Commission Analysis and Action**

In several dockets involving other gas utilities, the Commission has found that capacity release revenues should be booked to FERC Account 805.1. In an Order issued September 24, 1994 in Docket No. G-001/M-93-1219, the Commission stated:

FERC Account 805.1 is appropriate [for capacity release revenues] because it [805.1] is the PGA true-up account and is used for making adjustments to the Company's overall cost of gas. Placement of capacity release revenues in this account would also be consistent with past Commission treatment of this issue.<sup>1</sup>

In the current case, the Commission adopted this same view of FERC Account 805.1 and rejected the Company's argument that FERC Account 489 should be used.

Once capacity release revenue is booked in Account 805.1, its reflection in PGA rates is assured. The only question remaining is which customer classes will receive the benefit of this revenue. To-date, the Commission has found it equitable to reflect all this revenue (foregone cost) in the rate paid by the class of customers who had initially bore the burden of purchasing the (now released) capacity, i.e. the firm customer classes.

Under the circumstances of this case, the Company's assertion that the Commission's directive exceeded the scope of the Company's petition assumed greater control in the wording of the petition than in fact existed. In light of its established analysis, the Commission was clearly justified in directing NSP to book all its capacity release revenue (past, present, and future) to Account 805.1 and to credit firm customers' rates with that revenue. Indeed, carefully limiting the directive to the time period referred to in the Company's petition, as suggested by the Company, may have given the incorrect signal that the Commission had no established view of the two points discussed above: 1) that the appropriate account for capacity release revenues is Account 805.1 and 2) that the firm customers are the proper beneficiaries of the capacity release revenues.

At the same time, the Company's expressed fear that the Commission's decision precludes it

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<sup>1</sup> In the Matter of Interstate Power Company for Approval to Increase its Pipeline Demand Entitlements and to Recover the Associated Costs in its Monthly Purchased Gas Adjustment Pursuant to FERC Order 636, Docket No. G-001/M-93-1219, ORDER APPROVING PETITION AND REQUIRING FILING (September 20, 1994) at page 5.

from *ever* seeking alternative rate making treatment of future capacity release revenues is equally ill-founded. The Company is clearly free to make such proposals and the Commission will consider their merits on a case by case basis.

## **B. Ordering Paragraph 4**

### **1. The Order Language**

Ordering Paragraph 4 of the Commission's March 20, 1995 Order states:

Beginning July 1, 1994, NSP shall provide *quarterly* reports comparing off-system margins to capacity release transactions on Northern's electronic bulletin board to help determine whether NSP is maximizing the amount of revenue NSP is getting for the use of its excess capacity. [Emphasis added.]

### **2. NSP's Argument**

NSP requested that the Commission reconsider Ordering Paragraph 4 and amend that paragraph so that beginning on July 1, 1994, NSP would only be required to provide only *one annual* report regarding capacity release transactions rather than *on-going quarterly* reports.

NSP expressed the belief that an ongoing reporting requirement for an indefinite period of time would be burdensome for the Company and asserted that requiring reports after June 30, 1994 went beyond the scope of this docket. NSP suggested that if the Commission wants this information from all utilities this reporting requirement should be handled generically by modifying or clarifying the Commission's rules in a generic proceeding.

NSP also argued that the dollar amounts involved in the off-system sales program are relatively small compared to NSP's annual gas costs, i.e. approximately \$200,000 in OSEUS revenue compared to approximately \$200,000,000 in gas costs. In light of these economic realities, NSP argued that the expense of making quarterly reports is warranted.

In addition, NSP argued that quarterly reports are *unnecessary* because 1) they would have no impact on rates under NSP's proposal for OSEUS revenue, which was to credit retail rates at the time of the annual PGA true-up and 2) the Department monitors this information and requiring NSP to make these reports would duplicate what the Department is already doing.

Finally, NSP objected to the focus on individual off-system transactions being compared to individual capacity release transactions. NSP stated that the focus should be on maximizing total revenue generated by off-system sales rather than maximizing revenue from individual transactions.

### **3. Commission Analysis and Action**

At the outset, the Commission clarifies that an Order is the Commission's official decision on any matter so that NSP's statement that Ordering Paragraph 4 exceeds the scope of the Commission's decision expresses a logical impossibility.

Second, NSP's argument that the scope of the Order (directing on-going quarterly reports) cannot exceed the scope of the Company's petition seeks a novel limitation on the Commission's discretion in fashioning appropriate remedial action. In this case, the action directed by the Commission and objected to by NSP is a common regulatory device: reports on an ongoing basis. The fact that the Company initiated this proceeding with a petition regarding off-system sales occurring during a certain time period (November 1, 1993 to June 30, 1994) in no way inhibited the Commission from finding that the Commission's ongoing monitoring of the basic subject (the Company's off-system sales) would be properly assisted by ongoing reports on such sales. In short, the Commission's authority to secure information relevant to its statutory responsibility to regulate public utility activity in the public interest is not limited by how a utility characterizes and presents a subject to the Commission.

Third, the Commission has considered NSP's claim that providing such reports is too burdensome in light of the relative size of the off-system sales. The Commission continues to believe that the burden complained of is reasonable in light of the Company's resources and the Commission's need to monitor a new activity which involves potential harm to (as well as benefit for) ratepayers: off-system sales.

Fourth, the Commission rejects NSP's suggestion that the required reporting places undue emphasis on revenue from an individual (capacity release versus OSEUS) transaction. The Company argued that reporting should focus on *total* revenue generated from off-system sales rather than on revenue from an *individual* capacity release versus OSEUS transaction as directed by the March 20, 1995 Order.

Having considered the matter, the Commission continues to believe that individual off-system sales transactions should be reported in sufficient detail to allow review. The prudence of any particular off-system transaction can be most easily determined if that transaction is compared to the capacity release alternatives that were available to NSP at the time the off-system sale was made.

Fifth, NSP stated that a more accurate test of whether it is meeting the basic Commission objective (the lowest total delivered cost of gas for Minnesota ratepayers) is to compare the total credits as a percentage of its capacity resale revenue opportunity. The Commission has no objection to receiving this information, so long as it is clear that information on the individual transactions is also to be provided. It is simply too early in the analysis of NSP's off-system program to decide that review of individual off-system transactions is unwarranted.

Sixth, NSP's suggested that it is unnecessary for its reporting to include information available on the electronic bulletin board (EBB). However, the Department has reported that it is difficult and time consuming to obtain this information from the EBB. To facilitate access to this information, the Commission will continue to require the Company to include it as part of its quarterly reports.

Finally, the Commission rejects NSP's argument that the Company can only be required to provide the reports on a quarterly ongoing basis pursuant to requirements adopted on an industry-wide basis, i.e. through a rulemaking or other generic policy proceeding. In imposing the quarterly reporting requirement on NSP, the Commission clearly has adopted no requirement of general applicability and future effect applicable to all gas utilities. First of all, the requirement does not apply to all gas utilities. Second, the Commission has not stated that the reporting requirement will be permanent. The issue will be revisited when it reviews NSP's 1995 True-up Filing covering the period of July 1, 1994 through June 30, 1995. Third, although the Company alleges that each gas utility has the *capacity* to make off-system sales, the fact is that NSP is the only utility known to do so to-date. Clearly, the Commission has the discretion to proceed with this subject on a case-by-case basis.

In sum, the Commission affirms the decision (reflected in Ordering Paragraph 4) to require NSP to provide quarterly reports regarding its off-system sales program until further Order of the Commission. The reports are a reasonable safeguard against NSP harming its ratepayers by not working hard enough to maximize revenue from its unused capacity. Receipt of such reports on a *quarterly* basis will give a more timely indication of problems that need to be addressed or which may require immediate investigation.

### **C. Ordering Paragraph 7**

#### **1. The Order Language**

In Ordering Paragraph 7 of its March 20, 1995 Order, the Commission states:

NSP shall unbundle its balancing service from transportation service. The Company shall file proposed tariffs supported by a cost study *before* the Company's next rate case. [Emphasis added.]

#### **2. NSP's Argument**

NSP argued that a requirement that it file its revised tariffs and cost studies for unbundling its balancing service *before* its next rate case, as stated in the Ordering Paragraph, would be administratively inconvenient and confusing because NSP could technically satisfy the Commission's Order by filing on the day before it files its next rate case. NSP suggested that if it waited until then to make its filing, the petition would probably be consolidated with the rate case. NSP argued that this would accomplish the same result as requiring NSP to file proposed tariffs no later than when it files its next rate case.

NSP also argued that balancing service should be addressed in a generic proceeding. NSP asserted that it is unfair for the Commission to single NSP out for unbundling its balancing service.

#### **3. Commission Analysis and Action**

The Department has clarified that it would not be able to address the filing in question even if it

were to be filed substantially in advance of the Company's next rate case. In these circumstances, the Commission has no objection to NSP making the filing no later than its next rate case filing.

Regarding NSP's claim that it should only be required to unbundle its balancing service pursuant to a rule or generic order, the Commission finds that it has discretion to proceed with this subject on a case by case basis as it has done to-date. It is not clear that the uniformity advocated by NSP in this instance is appropriate. Gas utilities in Minnesota currently offer different tariffs, rates and non-regulated services and these differences will probably continue depending on each utilities' operating conditions and the customers served.

To illustrate the progress made using the Commission's case by case approach, the Commission has already authorized Peoples (Docket No. G-011/M-93-1093) to implement a balancing fee (for small volume transport customers who do not have telemetering equipment) and Minnegasco has a proposal pending (Docket No. G-008/M-95-216) to unbundle many of its tariffs, including balancing provisions and the use of capacity release. At least for the present, such a flexible approach appears appropriate.

#### **D. Ordering Paragraph 8**

##### **1. The Order Language**

Ordering Paragraph 8 of the Commission's March 20, 1995 Order states:

In NSP's next rate case, NSP's agency services, including its balancing service revenues,<sup>2</sup> shall be examined to determine the cost separation between NSP Gas Utility's regulated and non-regulated (agency) operations. To provide a basis for that examination, NSP shall include in its rate filing ***complete information*** regarding the costs and revenues experienced in connection with its agency services. The parties to the rate case will be expected to develop the record of this issue during the course of the proceedings. [Emphasis added.]

##### **2. NSP's Argument**

NSP requested that the Commission clarify what it meant by the phrase "complete information" in the Ordering Paragraph 7. Specifically, the Company requested clarification that the Order was not requiring it to file more information regarding agency service than it included in its 1992 Gas Rate Case, Docket No. G-002/GR-92-1186. The Company noted that the Commission's rate case filing rules (Minn. Rules, Parts 7825.3200 to 7825.4400) establish filing requirements for rate case filings and these rules do not require a utility to file a direct case (testimony and exhibits) supporting the allocations to a non-jurisdictional service. The Company argued that it should not be treated differently than other gas utilities in Minnesota.

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<sup>2</sup> In a proprietary portion of its October 20, 1994 filing, NSP specifically identified the revenue from balancing services provided by means other than the off-system utilization of wholesale services.



### 3. Commission Analysis and Action

The Commission will clarify that the “complete information” required to be filed with NSP’s next rate case consists of 1) detailed data in a comprehensible format regarding the Company’s costs of providing agency services which the Commission required of all gas utilities in Docket No. G-999/CI-88-302 and 2) a brief narrative explanation of what the data, in the Company’s view, shows. The Company has been keeping the cost data pursuant to the *agency services accounting plan* that it proposed and the Commission approved in an Order issued on January 5, 1990.<sup>3</sup> The Company’s plan, as approved, provided for 1) tracking agency services labor costs as they were actually incurred, using time sheet assignments to secure this information and 2) tracking any non-labor direct expenses incurred solely to provide agency services.

The Commission has determined that NSP’s agency services, including its balancing service revenues, warrant careful examination in the Company’s next rate case. The information that NSP will provide with its next rate case filing pursuant to Ordering Paragraph 8 as clarified here will show the actual costs incurred during the rate case test year and, of course, all the time periods for which financial information is reported in the development of test year numbers. The Company will also show how those costs have been segregated from the costs of providing regulated services. This information is a necessary initial step in developing the record for examination of this subject. A fully developed record will allow the Commission to determine whether cost separation between the Company’s regulated and non-regulated agency operations has been maintained and what, if any ongoing measures may be warranted.

Another complaint raised by NSP, that it is unfair to require it to file this information when no other gas utility is required to do so, is without merit. The reason that this information is requested of NSP is that it is the only utility known to be providing a balancing service through its agency services program at this time. The Commission need not wait until all gas utilities are engaged in a particular activity before requiring a utility that is so engaged to provide information about that activity.

Finally, NSP complained that in requiring it to file a direct case (testimony and exhibits) supporting the allocations to a non-jurisdictional service the Commission was imposing a filing requirement on it that went beyond what was required by the rate case filing rules. Minn. Rules, Parts 7825.3200 to 7825.4400. The Company’s argument appears to assume that the Commission is precluded by the rules from requiring additional information in the rate case filing.

However, the rate case filing requirements in the rules simply specify the minimum acceptable amount of information that a utility is required to file. It is standard practice for the Commission to identify, either at the close of a rate case or in proceedings between rate cases, issues of particular concern for examination in the next rate case. This is especially appropriate where, as

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<sup>3</sup> In the Matter of an Investigation into the Provision of Agency Services by Natural Gas Utilities. Docket No. G-999/CI-88-302, ORDER ESTABLISHING ACCOUNTING PROCEDURES (January 5, 1990).

here, the issue involves the allocation of costs and revenues that can have an impact upon rates. When, as here, the Company is given fair notice of this additional filing requirement, there is no problem with its imposition.

### **ORDER**

1. The petition for partial reconsideration or clarification of the March 20, 1995 Order is granted in part and denied in part, as specified hereafter:
  - a. **Ordering Paragraph 2 is affirmed.** NSP shall return *all past, present and future* capacity release revenue from all sources to firm customers using FERC Account 805.1.
  - b. **Ordering Paragraph 4 is affirmed.** NSP shall provide *quarterly* reports, beginning July 1, 1994 and continuing indefinitely *until further Order of the Commission*, comparing off-system margins to capacity release transactions on Northern's electronic bulletin board to help determine whether NSP is maximizing the amount of revenue NSP is getting for the use of its excess capacity.
  - c. **Ordering Paragraph 7 is reconsidered and amended** to require NSP to unbundle its balancing service from transportation service and file proposed tariffs and cost studies unbundling its balancing service *no later than its next rate case*.
  - d. **Ordering Paragraph 8 is clarified** by stating that NSP shall file, as part of its next rate case filing, detailed information regarding the Company's costs of providing agency services, information which the Company has been keeping pursuant to the its *agency services accounting plan* that the Commission approved in an Order issued on January 5, 1990 in Docket No. G-999/CI-88-302.
2. In all other respects, the March 20, 1995 Order is affirmed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)